

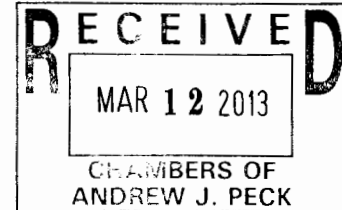
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DATE FILED: 3/12/13



ATTORNEYS AT LAW

Raymond L. Vandenberg
rvandenberg@vanfeliu.com

March 12, 2013

**VIA FACSIMILE (212) 805-7933**

The Honorable Andrew J. Peck
United States Magistrate Judge
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMO ENDORSED *p2*

Re: *Etalon Imob S.R.L. v. Schoenbach et al*, 12-CV-6868 (BSJ) (AJP)

Dear Judge Peck:

We are writing on Plaintiffs' behalf to request a court order pursuant to Rule 26 and 30 to allow a Hebrew/English interpreter for the depositions of Messrs. Zinger and Golan, two native Israelis and Hebrew speakers. While both have some understanding of English, there is a concern that during the deposition they may not fully understand the nuances and particularities of questions posed to them. Equally concerning is that their answers may not fully reflect their intended responses. Such particularity is important during the deposition phase of a trial, as witness responses could later be used for impeachment at trial. Inadvertent or misunderstood questions could jeopardize a party's case. Due to this concern, we emailed defendants' counsel on February 18th 2013, to notify him of our request for a Hebrew/English interpreter. (Email attached at Exhibit A). We received no response nor objection. We renewed notice to counsel on March 5th, 2013 that a Hebrew/English interpreter would be necessary at the deposition. (Email attached as Exhibit B). Again, we received no response. A week later, on March 11th, on the eve of the depositions, we renewed our request for a third time. Only then did counsel finally respond to our multiple e-mails, rejecting our request for an interpreter. (Email and response attached at Exhibit C). We are now writing to the Court to request an order pursuant to Rule 26 and Rule 30 to allow an interpreter at the deposition for Mr. Golan and Mr. Zinger. *See, e.g. Goyette v. DCA Adver. Inc.*, 1991 WL 639599 (S.D.N.Y. Sept. 16, 1991).

In *Goyette*, defendants requested the use of an interpreter for two native Japanese speaking witnesses. The court found that both witnesses had college level English training, significant English study, used English in conferences, interviews, and discussions with co-workers, and even had been hired by their company precisely because of their English fluency. As a result, the court concluded that the witnesses had sufficient ability to understand and answer deposition questions. However, despite these facts and findings, the court *still* ordered that an interpreter be available at the deposition to assist the witnesses in "understanding any questions

Hon. Andrew J. Peck

March 12, 2013

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that present particular difficulty." Id. The factual findings are clearly distinguishable from our case. Mr. Zinger and Mr. Golan do not hold advanced degrees in English, English is not a unique part of their skill set, nor do they regularly interact with co-workers in English. (Declarations of Messrs. Zinger and Golan in support of this request are attached at Exhibits D and E). Therefore, we request that Mr. Zinger and Mr. Golan be allowed to go one step further, and utilize an interpreter at their depositions to translate both questions and answers to ensure accuracy for the record.

We appreciate your attention to this matter.

Respectfully yours,


Raymond L. Vandenberg (RV-3661)

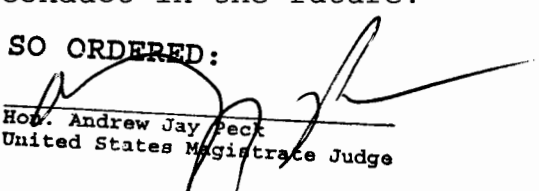
cc: Nathaniel B. Smith, Esq. (via email)

MEMO ENDORSED ORDER, 12 Civ. 6868

AP If plaintiff wishes to have an interpreter at the Zinger and Golan depositions, plaintiff should obtain and pay for the interpreter. If the deposition takes longer because of use of an interpreter, defendant will be allowed additional time for the depositions. *The deposition will not be postponed.*

The Court notes that the failure of counsel to communicate, or gamesmanship, resulting in emergency applications to the Court is unprofessional. We had an in person conference yesterday; you called from a deposition today; then I get this letter at 5:30 pm. In the words of Queen Victoria, "I ma not amused." And I will consider sanctions for such conduct in the future.

SO ORDERED:


Hon. Andrew Jay Peck
United States Magistrate Judge

Dated: New York, NY
March 12, 2013

BY ECF

COPY ECF: All Counsel

EXHIBIT A

Raymond Vandenberg

From: Raymond Vandenberg
Sent: Monday, February 18, 2013 12:39 PM
To: 'Nat Smith'
Cc: Kathleen Gardner; Laura Isenberg
Subject: RE: Etalon Imob S.R.L. and Maor Zinger v. Lawrence H. Schoenbach, et al.

Dear Nat,

Please advise as to the dates for Mr. Zinger and Mr. Golan.

Also, they will both need a Hebrew-English interpreter.

Regards,

Ray



Raymond L. Vandenberg, Esq.
60 East 42nd Street, 51st Floor, New York, NY 10165
tel: 212.763.6800 | fax: 212.763.6810
rvandenberg@vanfelli.com | www.vanfelli.com

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From: Raymond Vandenberg
Sent: Thursday, February 14, 2013 2:29 PM
To: 'Nat Smith'
Cc: Kathleen Gardner; Laura Isenberg
Subject: RE: Etalon Imob S.R.L. and Maor Zinger v. Lawrence H. Schoenbach, et al.

Dear Nat,

Mr. Zinger and Mr. Golan would like to schedule their depositions on March 12 and 13 (or preferably, both on one day). Can you accommodate them?

Also, this will confirm Mr. Schoenbach for March 8. Please confirm Mr. Leon for March 7.

Thanks very much.

Ray

EXHIBIT B

Raymond Vandenberg

From: Raymond Vandenberg
Sent: Tuesday, March 05, 2013 2:03 PM
To: Nat Smith <natbsmith@gmail.com> (natbsmith@gmail.com); natbsmith@att.net
Cc: Laura Isenberg; Kathleen Gardner
Subject: Depositions

Dear Nat,

Pursuant to Local Rule 30.3, we intend to have both Mr. Zinger and Mr. Golan present at the depositions.

Local Civil Rule 30.3. Persons Attending Depositions [formerly Local Civil Rule 30.4]

A person who is a party in the action may attend the deposition of a party or witness. A witness or potential witness in the action may attend the deposition of a party or witness unless otherwise ordered by the Court.

Please confirm that you will have a Hebrew-English Interpreter for the depositions of Mr. Zinger and Mr. Golan.

Thanks,

Ray



Raymond L. Vandenberg, Esq.

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EXHIBIT C

Raymond Vandenberg

From: Nat Smith <natbsmith@gmail.com>
Sent: Monday, March 11, 2013 8:28 PM
To: Raymond Vandenberg
Subject: Re: Hebrew translator

Both of them speak perfect English and a translator is utterly unnecessary. In fact, Mr. Schoenbach and Mr. Zinger dealt with them both in English on the phone and in writing and there is no legitimate basis for your request, which I believe is being made only to increase costs. Indeed, I personally saw and heard Mr. Zinger participated in the Schoenbach deposition without the aid of an interpreter and he spoke English in my present to Mr. Schoenbach as well as to you and you associate. In that same regard, please note that, notwithstanding your promise to pay the hotel for Mr. Leon's stay, you did not do so. I will take that up at the appropriate time and place.

On Mon, Mar 11, 2013 at 7:33 PM, Raymond Vandenberg <rvandenberg@vanfelju.com> wrote:
Nat,

You never confirmed that you will have a certified Hebrew-English interpreter for the Golan and Zinger depositions. Please confirm that you will have one present.

Thanks.

Ray

Sent from my iPhone

--

Law Office of Nathaniel B. Smith
111 Broadway - Suite 1305
New York, New York 10006
212-227-7062 (tel)
212-346-4665 (fax)

natbsmith@gmail.com

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ETALON IMOB S.R.L. and MAOR ZINGER

Plaintiffs,

-against-

**LAWRENCE H. SCHOENBACH, THE LAW OFFICES
OF LAWRENCE H. SCHOENBACH, PLLC,
INAH HOLDINGS, LLC, INTERNATIONALS ASSETS
& HOLDINGS, LLC, and RICARDO LEON**

Defendants.

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Index No. 12 CV 6868 (BSJ)

I, Meir Golan, declare under penalty of perjury, under the laws of the United States of America that the following is true and correct:

1. I was born in Israel and continue to live there today.
2. I only studied English in High School, and did not study English in University.

All my graduate and undergraduate courses were taught in Hebrew.

3. I normally converse in Hebrew at work and in social settings.
4. I only have a basic knowledge of English.
5. I have a much more advanced vocabulary in Hebrew.

Executed on March 12, 2013, at New York, New York

Mr. Meir Golan

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ETALON IMOB S.R.L. and MAOR ZINGER

Plaintiffs,

-against-

LAWRENCE H. SCHOENBACH, THE LAW OFFICES
OF LAWRENCE H. SCHOENBACH, PLLC,
INAH HOLDINGS, LLC, INTERNATIONAL ASSETS
& HOLDINGS, LLC, and RICARDO LEON

Defendants.
----- X

Index No. 12 CV 6868 (BSJ)

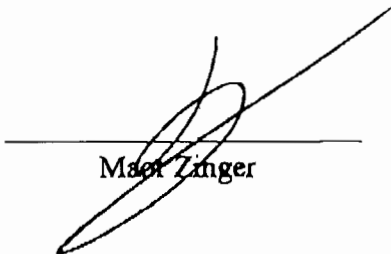
I, Maor Zinger, declare under penalty of perjury, under the laws of the United States of America
that the following is true and correct:

1. I was born in Israel and continue to live there today.
2. I only studied English in High School, and did not study English in University.

All my graduate and undergraduate courses were taught in Hebrew.

3. I normally converse in Romanian or Hebrew at work and in social settings.
4. Whenever I need to speak in English for work I always take a translator with me.
5. I only have a basic knowledge of English.
6. I have a much more advanced vocabulary in Hebrew

Executed on March 12, 2013, at New York, New York


Maor Zinger



ATTORNEYS AT LAW

FAX COVER SHEET

DATE: March 12, 2013
TO: Hon. Andrew J. Peck, United States Magistrate Judge
FAX NO.: 212-805-7933
FROM: Raymond Vandenberg

13 PAGES (Includes Cover Sheet)

If you did not receive all of the pages or find that they are illegible, please call (212) 763-6823 or fax (212) 763-6810.

Comments:

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